



Order 97-3-17

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 13th day of March, 1997

SERVED: March 13, 1997

**AMERICAN AIRLINES, INC. et al.,
and THE TACA GROUP RECIPROCAL CODE-
SHARE SERVICES PROCEEDING**

Docket OST 96-1700

ORDER

APPLICATION

On July 8, 1996, American Airlines applied for an exemption to allow it to integrate its certificate authority to serve points in Central America and the Caribbean (Route 137), South America (Route 389), and Mexico (Route 560). Additionally, the TACA Group (composed of six Central American airlines) filed separate applications for exemptions authorizing the carriers to serve additional points in the United States, Canada, Europe, and Tokyo.¹ Concurrently, American and the TACA Group filed a joint application for statements of authorization to engage in certain reciprocal code-sharing services. These applications were filed under 49 U.S.C. section 40109 and 14 C.F.R. Parts 207 and 212, respectively.

BACKGROUND

In the interest of administrative efficiency, we decided to institute the *American Airlines, Inc., et al., and the TACA Group Reciprocal Code-Share Services Proceeding* (Docket OST-96-1700), consolidating each of the captioned applications of American Airlines, Aviateca, Compania Panamena de Aviacion, Lineas Aereas Costarricenses, Nicaraguense de Aviacion, TACA International Airlines, and TACA de Honduras for certain exemption authorities; and the American Airlines, *et al.*, and the TACA Group statements of authorization for reciprocal code-sharing services.² We also required additional information to facilitate our review of the applications and deferred consideration of these applications pending further notice.

¹ The TACA Group airlines would use this additional authority to implement the proposed code-sharing arrangement with American Airlines.

² See Orders 96-9-15 and 96-11-12.

Finally, we stated that when we determined that the record of this case was complete, we would announce an appropriate procedural schedule for reaching a decision expeditiously.

EVIDENTIAL SUBMISSIONS

On December 31, 1996, and January 3, 1997, American Airlines and the TACA Group airlines filed, *inter alia*, a joint response to the requests for information in Orders 96-9-15, issued September 13, 1996, and 96-11-12, issued November 18, 1996. The Joint Applicants also filed a motion under Rule 39 of the Department's procedural regulations, 14 C.F.R. 302.39, for confidential treatment of various documents submitted in support of the application.³

As part of these various submissions, the Joint Applicants indicate that they have withheld, or provided redacted versions of, certain documents containing "extraordinarily sensitive" commercial information, which they would make available to DOT staff for review on an *in camera* basis in order for the Department to determine the relevance of such information to the proceeding. The various motions/requests do not identify the referenced documents, but by letters dated December 31, 1996, and January 28, 1997, counsel for American Airlines provided the Department's Office of Aviation Analysis with a list of various documents/materials all or partially withheld for *in camera* inspection.

PRELIMINARY DETERMINATION ON CERTAIN CONFIDENTIALITY ISSUES

The applicants have withheld various material that they consider privileged. They state that they will make these documents and information available to Department of Transportation staff, on an *in camera* basis, to determine their relevance to the proceeding.

As a preliminary matter, we have placed the December 31, 1996, and January 28, 1997, letters that list the *in camera* review materials in the docket as an appropriate part of the Rule 39 motion. Based on our initial review, we find that these lists do not describe the materials considered privileged with the specificity or completeness necessary for us to establish their relevance to our evaluation of the merits of this application.⁴

³ On January 28, February 18 and 26, 1997, the Joint Applicants filed additional evidentiary materials, requesting confidential treatment for these documents under 14 C.F.R. 302.39. The applicants also submitted English translations of certain documents originally submitted in Spanish.

⁴ See, e.g., Order 95-11-5, 95-11-18, and 96-1-6.

We therefore direct the applicants to describe fully the material withheld, consistent with our standard. To this end, the applicants shall:

1. Fully identify each redacted or withheld document;
2. Supply a complete description of the nature of each document and withheld portion;
3. Provide a specific basis for the applicants' view as to the privilege and lack of relevance of each document or withheld portion; and
4. Explain for each document or withheld portion why our confidential procedures are insufficient to protect the applicants' competitive and commercial interests.

We fully expect that the supplemental information provided by the Joint Applicants will be in sufficient detail, both in substance and organization, to allow timely evaluation by the Department and all interested parties, particularly as to its relevance to this proceeding. Furthermore, in reaching this preliminary ruling, the Department is making no determinations that the materials filed in this docket are otherwise complete or ripe for consideration. Our review of these materials is continuing. When we are satisfied that the applications are complete, we will issue an order establishing appropriate procedures.

CONSOLIDATION ISSUE

As a final matter, on February 3, 1997, Delta Air Lines, Inc. (Delta) filed a motion urging the Department to consolidate this proceeding with the American-Avianca applications for exemption and statements of authorization to permit them to implement reciprocal code-sharing in the U.S.-Colombia market (see Dockets OST-97-2081 and OST-97-2083).⁵ We do not agree with Delta's consolidation request and will therefore deny the motion.⁶

While the American/TACA Group and American/Avianca cases raise certain analogous competitive concerns, we find that in other relevant respects the cases are sufficiently distinct to warrant maintaining the American/TACA inquiry as an independent investigation. For example, the two cases do have certain contrasting elements, including size, number, and geographic dispersion of the affected markets.

⁵ No answers to the motion were filed. Additionally, on February 20, 1997, the City of Houston and the Greater Houston Partnership filed comments opposing the American/TACA Group requests and a motion for leave to file. We will grant this motion for leave to file an otherwise unauthorized document.

⁶ We will address the American-Avianca applications in a separate order.

ACCORDINGLY:

1. We direct American Airlines, Inc., Aviateca S.A., Compania Panamena de Aviacion S.A., Lineas Aereas Costarricenses S.A., Nicaraguense de Aviacion S.A., TACA de Honduras S.A., and TACA International Airlines S.A. to provide the detailed descriptions set forth in this order, as a supplement to their joint application for confidential/*in camera* treatment in Docket OST-96-1700;
2. Upon submission by the applicants of the required descriptions in this docket, interested parties will be provided seven business days to file comments on the applicants' motion for confidentiality;
3. We defer our determination on these confidential matters, pending expiration of our regulatory comment deadline;
4. We defer the 21-day deadline for the filing of comments set forth in 14 CFR Part 303 until further notice;
5. Upon our determination that the application is complete, we will establish a procedural schedule for comments and such other responsive pleadings as may be determined necessary to decide this matter fairly and expeditiously;
6. We grant all motions for leave to file otherwise unauthorized documents; and
7. We shall serve this order on all interested parties.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://www.dot.gov/general/orders/aviation.html>*